

Panaji, 29th June, 1995 (Ashada 8, 1917)

SERIES II No. 13

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

**NOTE:—** There is one Extraordinary issue to the Official Gazette, Series II No. 12 dated 22-6-95 namely, Extraordinary dated 26-6-95 from pages 117 to 118 regarding Notification/Corrigendum from Department of Personnel and Revenue Department.

### GOVERNMENT OF GOA

#### Department of Personnel

##### Order

No. 24/4/81-PER/Part

Shri N. Dilip Kumar, IPS, Superintendent of Police (Headquarters) is hereby transferred with immediate effect and posted as Dy. Commandant General (Home Guards) and Dy. Director (Civil Defence) thereby relieving Shri V. V. Vernekar, Superintendent of Police (Security and Traffic) of the additional charge.

By order and in the name of the Governor of Goa.

Anthony Ferrao, Under Secretary (Personnel).

Panaji, 29th May, 1995.

#### Home (General) Department

##### Addendum

No. 11-463-90-HD(G)

Read: — Order No. 11-463-90-HD(G) dated 9-5-1995.

Government of Goa is pleased to nominate the following freedom fighters as non-official members on the Committee for Rehabilitation of Freedom Fighters reconstituted vide order referred to above.

16. Shri Bonifacio Dias, H. No. 226, St. Jerome Wado, Duler, Mapusa, Goa.
17. Shri Vasant Atmaram Prabhu Dessai, Parcem, Pernem, Goa.

By order and in the name of the Governor of Goa.

D. M. Katkar, Under Secretary (Home).

Panaji, 6th June, 1995.

#### Planning Department

##### Order

No. 10-1-82/PLG(Vol. I)

Read: Government Order No. 10-1-82/PLG(Vol. I) dated 25-8-1993.

The High Power Committee constituted under Government Order No. 10-1-82/PLG (Vol. I) dated 25-8-1993 to monitor

the 20 Points Economic Programme shall also monitor the Member of Parliament Local Area Development Scheme.

The Committee will also review the progress of implementation of MPLADs alongwith the progress of implementation of 20 Points Programme as and when it meets.

By order and in the name of the Governor of Goa.

G. S. Zuarkar, Under Secretary (Budget).

Panaji, 23rd May, 1995.

#### Revenue Department

##### Notification

No. 22/45/95-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule appended hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Setting up an Industrial Estate at Costi village of Sanguem Taluka.

And whereas in the opinion of the Government the provisions of sub-section (1) of section 17 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") are applicable.

Now, therefore, the Government hereby notifies under sub-section (1) of section 4 of the said Act that the said land is likely to be needed for the purpose specified above.

The Government further directs under sub-section (4) of section 17 of the said Act that the provisions of section 5A of the said Act shall not apply in respect of the said land.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this Notification, will, under clause (seventh) of section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints, under clause (c) of section 3 of the said Act Deputy Collector (L.A.), Collectorate of South Goa District, Margao-Goa, to perform the functions of a Collector, South Goa District, Margao under the said Act in respect of the said land.

5. The Government also authorises, under sub-section (2) of section 4 of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector, South Goa District, Margao.
2. The Deputy Collector (L.A.), Collectorate of South Goa District, Margao.
3. The General Manager (L.A.), Goa, Daman and Diu Industrial Development Corporation Ltd., 18th June Road, Panaji-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the office of the Deputy Collector (L.A.), Collectorate of South Goa District, Margao, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

#### SCHEDULE

(Description of the said land)

Taluka: Sanguem		Village: Costi
Survey No./ Sub-Div. No.	Name of the person believed to be interested	Approximate area in sq. mts.
1	2	3
46/3 part	Sociedade Patriotico dos Baldidos des Navas Conquestas.	5,00,000
<b>Boundaries:</b>		
North: S. No. 3, 48, 47 & Nala.		
South: Village Muguli & Road.		
East: S. No. 46/3, Road.		
West: Village Muguli.		
Total .....		5,00,000

By order and in the name of the Governor of Goa.

E. A. Cardozo, Under Secretary (Revenue).

Panaji, 22nd June, 1995.

#### Department of Labour

Order

No. 28/16/89-ILD

The following Award given by the Industrial Tribunal Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Industries and Labour).

Panaji, 28th November, 1994.

#### IN THE INDUSTRIAL TRIBUNAL, GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit Jairam Agni, Hon'ble Presiding Officer)

Ref. No. IT/37/89

Shri Ratnakar Naik & 32 Others  
Rep. by Goa Trade & Commercial  
Workers' Union.

—Workmen/Party I

V/s

M/s Nav Gomantak Prakashan,  
Borda, Margao-Goa.

—Employer/Party II

Party I represented by Adv. Raju Mangueshkar.

Party II represented by Adv. L. V. Talaulikar.

Panaji, Dated: 17-10-94.

#### AWARD

In exercise of the powers conferred by clause (d) of Sub-Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 11th May, 1989 bearing No. 28/16/89-ILD has referred the following issue for adjudication by this Tribunal.

"Whether the action of the Management of M/s Nav Gomantak Prakashan, Borda, Margao-Goa, in terminating the services of below mentioned 33 workmen with effect from 11-10-1988 is legal and justified?"

1. Shri Ratnakar Naik
2. Shri Narayan Gauns
3. Shri Ramchandra Kolambkar
4. Shri Prakash Kunde
5. Shri Vasant Shirke
6. Shri Vishnu Chawan
7. Shri Mangesh Borkar
8. Shri Vasant Kochare
9. Shri R. R. Kumbhar
10. Shri S. L. Shirke
11. Shri Ranoji Langote
12. Shri Damu Naik
13. Shri Ramesh Borkar
14. Shri Dyanesh Naik
15. Shri Girija Langote
16. Kum. Lata Parab
17. Shri Govind Jadhav
18. Shri Ashok Naik
19. Shri Chandrakant Chawan
20. Shri Gurudas J. Joshi
21. Shri Navnath Devidas
22. Shri Shambu Shirodkar
23. Shri Prakash U. Borkar
24. Shri Anant Rama Priolker
25. Shri B. C. Pai
26. Shri Ravi Shirodkar
27. Shri Narottam Parvatkar
28. Shri Ravindra Prabhu
29. Shri H. V. Naik
30. Shri H. L. Bhogvenkar
31. Shri Laxman Gauns
32. Shri Gajanan Shet
33. Shri Prakash Naik

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/37/89 and notice was issued to the parties. In pursuance to the said notice, the parties put in their appearances. Party I-Workmen (For short, 'Union') filed its statement of claim at Exb. 2. The brief facts of the case as stated in the statement of claim are that the Party II-Nav Gomantak Prakashan (For short 'Employer') publishes a Marathi daily called, 'Rashtmat' having wide circulation in and outside Goa. The said publication was started somewhere in the year 1963 having daily circulation of about five thousand copies. The Employer initially employed 53 workmen engaged in the work of hand-composing, printing, distributing, office staff, etc. The working of the Press was in three shifts. One starting from 8.30 a.m. and ending at 5.30 p.m. the second shift from 5.30 p.m. to 1.30 a.m. and the third shift from 2.00 a.m. to 8.00 a.m. The cost of the newspaper was initially fixed at 50 paise per copy but was subsequently increased to 70 paise. The Employer received various advertisements from the Government as well as other reputed business houses and other commercial establishments. The workmen on several occasions requested the employer to enhance their salaries and to provide other facilities but the employer refused to do the same. Therefore, about 42 workmen unionised themselves and became the members of the Union on 10-11-1982. Thereafter, the Union placed the charter of demands with the Employer on 28-3-84 and the settlement was arrived at on 11-7-84. The Union's further case is that, since there was rapid increase in the cost of living in Goa and since the other similar dailies offered increased wages and other benefits to their workmen the Union placed another charter of demands with the Employer. By way of Interim Relief, the Employer enhanced the wages in the year 1985 by Rs. 60/-. Thereafter all of a sudden the Employer issued a notice of change of service condition vide letter dated 1-6-88. In the said notice, it was stated that the said notice was given in accordance with Sec. 9-A of the Industrial Disputes Act, 1947 and all the concerned workmen informed that it was the intention of the Employer to effect the change/changes specified in the annexure of the said notice, w. e. f. 22-6-88 in the conditions of service applicable

workmen in respect of matters specified in the Fourth Schedule to the said Act. In the annexure the change in the conditions of service that was specified was that due to the financial constraints the management wished to have the paper publication printed by offset printing process including photo-type setting through Xavier Printing Press Pvt. Ltd., which rationalisation process would only enable the management to withstand the present trade and business competition in the paper publication industry. It was further stated that since the trial of photo-composing process was successful, it was being introduced on a regular basis w. e. f. 22nd June, 1988. The copy of the said notice was served on the President of the Union and to other authorities. The case of the Union is that, by virtue of the said notice, the Employer proposed to terminate the services of the 33 workmen mentioned in the schedule of reference, which was illegal and unjustified and therefore the Union approached the Labour Commissioner. The Union submitted before the Labour Commissioner that the workmen had put in 20 years of service and the Employer did not give proper notice nor followed proper procedure. The Union further stated that instead of terminating the services of the workmen, the Employer could have trained and retained the services of the said workmen. However, the Employer contended that its action was legal and justified and the question of retaining the workmen did not arise. The contention of the Union is that the reasons given by the Employer in the notice dated 1-6-88 were not correct and the Employer was making huge profits. The Union has further contended that the Employer cannot do away with the workmen who have put in over 20 years of service under the garb of 'Rationalisation'. The Union has also contended that in the so called 'Rationalisation' process of the Employer, hands are needed to operate and/or work and the said workmen could have been trained in the various new processes and retained in service, as is done by other dailies like Nav Prabha, Navhind Times and Gomantak. The Union stated that the action on the part of the Employer in choosing and terminating the services of the 33 workmen mentioned in the schedule of reference, who were the Union Executive Committee members is patently mala fide and unjustified. The Union therefore in the statement of claim has prayed for a declaration that the action of the Employer in terminating the services of 33 workmen mentioned in the schedule of reference is illegal and unjustified and has further claimed reinstatement of the said 33 workmen with full back wages and continuity of service.

3. The Employer filed its written statement at Exb. 3 resisting the various contentions raised by the Union in the statement of claim. The Employer contended that this Tribunal had no jurisdiction to adjudicate the dispute and the reference was not maintainable on the grounds that the order of reference was ab-initio bad in law and ex-facie defective being made without proper application of mind as regard the parties and/or the facts of the case; that opinion formed by the Government that Industrial dispute exists or is apprehended is not based on proper examination of demand which is perverse and frivolous; that the reference is vitiated ab-initio and bad in law as there is no termination or retrenchment of the said 33 workmen; that assuming that there is termination or retrenchment of services of the said 33 workmen, it is concomitant effect of lawful closure which came into effect from 11-10-1988 which is the statutory right of the Employer to manage or close an undertaking fully or partially as the situation or circumstances may warrant, and the workmen are not entitled to challenge the closure nor the resulting termination can be the subject matter of judicial scrutiny. The Employer further contended that the staff strength initially was 60 in number. However, at the time of the closure of the two departments, the staff strength did not exceed 50 in number. The Employer denied that it received regularly numerous and various advertisements from the Government as well as from reputed business houses and other commercial establishments. That the Employer revised the pay-scales of the workmen w. e. f. 1-4-1978; 1-1-1981; 1-7-1984; 1-4-1985 and 1-6-1986. The Employer denied that the workmen were denied facilities and/or enhanced wages by it. The Employer also denied that it had not given notice or not followed the necessary procedure in accordance with Sec. 9-A of the I. D. Act, 1947 or that the reasons given in its letter dated 1-6-88 are not correct, or that it was making huge profits or that the action of the Employer in terminating the services of 33 workmen was illegal, unjustified and mala fide. The Employer further contended that the other dailies were managed by business houses of repute or their allied Companies which can purchase modern photo composing and printing unit machinery of their own which is not the case of the Employer. The Employees had accepted the closure as a matter of fact and they accepted the closure compensation and other legal dues willingly.

Also, as a consequence of closure the employees decided to dissolve the Rashtramat Employees Co-operative Credit Society and passed a resolution to that effect in the special General Body Meeting held by the Society. Thereafter, the Asst. Registrar of the Co-operative Societies, South Zone, Margao, Goa, appointed the Liquidator who was to proceed to refund the amount of shares to the share holders. The Employer in fact in the written statement has justified its action in closing its two departments and denied that the workmen were entitled to reinstatement with full wages. The Union thereafter filed rejoinder at Exb. 4 controverting the pleadings made by the Employer in the written statement.

4. On the pleadings of the parties, the following issues were framed at Exb. 5.

1. Whether the management declared a closure or partial closure which became effective and continuously came into force w.e.f. 11-10-1988 as alleged by the management?
2. Whether this action of the management amounts to retrenchment within the meaning of the term under I. D. Act?
3. If so, whether action of the management in terminating the services of the 33 workmen is just and legal in the circumstances of the case?
4. If not, what reliefs are the 33 workmen entitled to?
5. What order?

After the issues were framed, the Employer filed an application dated 9-12-89 praying for framing of two additional issues namely:

1. Whether the management proves that the reference as made by the Government is without jurisdiction and/or not maintainable in law? AND
2. Whether the Party I proves that the services of the 33 workmen are terminated by the management?

My learned Predecessor Shri S. V. Nevagi after hearing the parties by order dated 19-1-1990 dismissed the application of the Employer dated 9-12-89 and maintained the issues framed earlier at Exb. 5. The Employer filed Writ Petition against the said order in the High Court of Bombay, Panaji Bench which was dismissed by the High Court. The parties have filed written arguments in this case, which are on record. Though this Tribunal refused to frame the additional issues on the point of jurisdiction and maintainability of the reference and the Writ Petition filed by employer was also dismissed, the Employer in written arguments again referred to the issues of jurisdiction and maintainability of the reference. However, when the arguments were heard orally and the above facts were brought to the notice of Shri Talaulikar, the learned Advocate for the Employer, he submitted that the employer is not pressing for the issue of jurisdiction and maintainability of the reference and that the employer concedes that this Tribunal has jurisdiction and that the reference is maintainable.

This being the position, my findings on the issues framed at Exb. 5 are as under:

1. Issue No. 1 — Yes
2. Issue No. 2 — Yes
3. Issue No. 3 — Yes
4. Issue No. 4 — No
5. Issue No. 5 — As per order below

#### REASONS

5. Issue No. 1: It is an admitted fact that the 33 workmen whose services is alleged to be terminated, on account of closure declared by the employer were working in two departments namely the Composing department and Printing department. The first point which has been raised by the Union is that no individual notice was given to the workmen before the closure by the employer. Adv. Raju Mangueshkar representing the Union submitted that it was incumbent upon the employer to give individual notice to the workmen before the closure was effected. He also submitted that no proper notice of closure was given by the employer as required under the provisions of the Industrial Disputes Act, 1947 and therefore closure declared by the employer was itself illegal or nonest. Adv. Talaulikar representing the employer submitted on the other hand that the provisions of the Industrial Disputes Act, do not provide for serving of indi-

vidual notice on the workman before the closure is effected. He further submitted that notice is required to be given to the Government u/s 25-FFA of the Industrial Disputes Act, 1947. He however, contended that such a notice is not necessary if the establishment employed less than 50 workers and since the employer did not employ 50 or more workers, there was no question of giving notice u/s 25-FFA of the I.D. Act, 1947. It is true that the provisions of the I.D. Act, 1947 do not provide for giving individual notices to the workmen in case closure is to be effected by the employer. Since it is the contention of the Union that such a notice is required, it was for the Union to satisfy me on this point and the Union has failed to do so. Sec. 25-FFF of the I.D. Act, speaks about giving notice and compensation to the workmen after the undertaking has been closed down by the employer and such a notice and compensation is to be in accordance with the provisions of Sec. 25-F of the I.D. Act, as if the workmen have been retrenched. Sec. 25-F provides that in case, one month's notice is not given to the workman he shall be paid wages for the period of notice. This shows that the notice to the workman prior to the closure is not a condition precedent. The Supreme Court in the case of *R. P. Singh Manufacturing Company v/s Union of India* reported in AIR 1960 S. C. at page 923 has observed that to pay closure compensation or give notice before closure of business is not a condition precedent. Sec. 25-FFA of the I.D. Act, states that the employer who intends to close down an undertaking shall serve at least 60 days notice before the date on which the intended closure is to become effective, in the prescribed manner on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. The said section however, further provides that nothing contained in the said section shall apply to an undertaking in which less than 50 workmen are employed or were employed on an average per working day in the preceding 12 months. The Employer has brought in evidence through its document namely the workers register from which it can be seen that the employer employed less than 50 workmen in the preceding 12 months before the intended closure. Therefore, the provisions of this Sec. 25-FFA were not applicable to the employer. Even assuming that the employer employed 50 or more workmen in the preceding 12 months, even then, failure to give notice to the Government as contemplated in the said section, would not make closure illegal or nonest. Failure to give such a notice on the part of the Employer would attract penalty u/s 30A of the I.D. Act. The Bombay High Court in the case of *Poon Vasi and Others v/s Crown Silk Weaving Industries and Others* reported in 1994 I, C.L.R. at page 1047, while analysing the provisions of Sec. 25-FFA, 25-FFF and 25-O has held that notice under section 25-FFA is not condition precedent for closure of an undertaking and non-compliance therewith cannot have the effect of rendering the closure illegal and nonest from its commencement. Therefore, the contention of the Union that the closure is illegal and nonest for not giving individual notice to the workmen or for not complying with the Sec. 25-FFA has no substance and hence this contention is liable to be rejected.

The second contention that is raised by the Union is that the management of the employer only shifted the Printing at Xavier Printing Press and that the daily, 'Rashtramat' is owned and managed by the same management which is looking after Xavier Printing Press. It is also contended by the Union that after the closure of the Printing and Composing Sections, the employer has employed about 7 or 8 workmen. However, no evidence has been led by the Union in support of their this contention. On the contrary Shri Kolambkar, the witness for the Union has stated in his deposition that Nav Gomantak Prakashan, the Employer, is a trust of which the trustees are Timblo, Shantilal, Garses, V. M. Salgaonkar and Bapalal and the Xavier Printing Press is owned by Shri Anil Salgaonkar. Thus, there is clear admission on the part of the Union that the management of Nav Gomantak Prakashan and that of Xavier Printing Press are totally different. Besides, the employer has produced bills at Exb. 35 which show that the payment of the charges of Printing is made directly by the Employer to the Xavier Printing Press as and when the bills are issued by it. This shows that the management of Nav Gomantak Prakashan has nothing to do with the management of Xavier Printing Press. The Union has failed to prove that the Xavier Printing Press is owned and managed by the same management of the Employer Nav Gomantak Prakashan. As regards the employment of 7 or 8 workmen, after the closure of the said two sections, the Union has not produced any evidence to substantiate their stand. In fact, in the course of the cross examination of Shri Madkalker, witness of the employer, the witness has stated that he can produce the staff attendant register

from 1989 to 1992. However, the witness was not called upon to produce the said register. There is a foot note at the end of page 7 of the deposition of the said witness recorded on 25-7-92 which states that Adv. R. Mangueshkar representing the Union wanted to produce certain documents through the said witness, which he never did. Therefore, except for the bald statement of the Union that the employer employed 7 or 8 workers after the closure, there is no evidence to support this contention of the Union. Another contention that is raised by the Union is that publication of the daily 'Rashtramat' is being done from the same premises and hence there is no closure. Merely because the publication is done from the same premises, it cannot be said that there is no closure. The closure declared by the employer is not in respect of the entire undertaking or establishment. It is a partial closure in respect of the Printing and Composing Sections only. It is on record that the 33 workmen whose service is alleged to be terminated were working in this Composing and Printing Sections. It is also on record that the office of Nav Gomantak Prakashan, the employer, continues to be in the same old building. The Supreme Court in the case of workmen of Indian Leaf Tobacco Development Co. Ltd., v/s. the Management of Indian Leaf Tobacco Development Co. Ltd., reported in AIR 1970 S. C. at page 170 has held that no Industrial Tribunal even on a reference u/s 10(1) (d) can interfere with discretion exercised by the Company in a matter of closing down some of its branches or depots. Even if such closure may not amount to closure of business of the company, the Tribunal has no power to issue orders directing the Company to reopen the closed depot or branch if the Company if fact closed it down and that closure is genuine and real. The closure may be treated as stoppage of the part of activity or business of the Company. Such stoppage of part of business is an act of management which is entirely in the discretion of the Company carrying on the business. The Composing and Printing Sections are the independent sections of the business of the employer. It is the part of the activity of the business of the Company and therefore applying the principles laid down by the Supreme Court in the case of Indian Leaf Tobacco Development Company Ltd. (Supra) the employer could close down its part of the activity namely the Composing and Printing Sections. By Amendment Act No. 46 of 1982 Sec. 2-CC has been introduced defining, "closure", which has come into effect from 21-8-84. In the said Section closure has been defined meaning the permanent close down of a place of employment or part thereof. Therefore, partial closure is now permissible under the law and by closing down the Composing and Printing Sections, the employer declared partial closure. Now what remains to be seen is whether the partial closure came into effect from 11-10-88 as contended by the Employer. Shri Kolambkar, the witness of the Union in his deposition has stated that on 10-10-88 he worked in the night shift and that in the early hours of 11-10-88 at about 2.30 a.m. when he was leaving for home, he saw one Mr. Basavraj asking some workmen to go out of the Press and that thereafter he locked the door of the Press from outside. A notice was also fixed on the front board in the presence of the police informing the workmen that their services were not required anymore and that they should collect their dues from the office. The fixing of the notice referred to by the witness Shri Kolambkar is the notice dated 10-10-88 - Exb. 29. The said notice clearly states that the employer had decided to close down permanently the Composing & Printing w.e.f. 11-10-88 on account of financial constraints. The other witness Shri Ratnakar Vithal Naik examined by the Union has also stated that all the workmen were retrenched w.e.f. 11-10-88. There is no evidence led by the Union to show that after 11-10-88 the employer had any time carried on Printing and/or Composing work of their own in old premises or at any other place. The Union infact has admitted that the Printing work is being done by Xavier Printing Press and the Employer has produced documentary evidence namely the bills at Exb. 35 issued by Xavier Printing Press and the vouchers at Exb. 36 which show that the payment of Printing charges is made by the employer directly to the said Press. Also, upon the complaint made to the Dy. Labour Commissioner, Margao, conciliation proceedings were held in the office of the Dy. Labour Commissioner. The Union has produced minutes of the meeting held before the Dy. Labour Commissioner at Exb. 17 from which it can be seen that the case of the Union is that the workmen have been refused employment from 11-10-88 and the employer's case was that it has closed the Composing and Printing Sections permanently w.e.f. 11-10-88. All these facts prove beyond doubt that the partial closure of the establishment of the Employer Nav Gomantak Prakashan, namely the Composing and Printing Sections, came into effect continuously from 11-10-88. I, therefor hold that the management declared partial closure which became effective and continu-

ously came into force w. e. f. 11-10-88 and hence I answer the issue accordingly.

6. Issue No. 2: It is the case of the Union that the service of 33 workmen who were working in the Composing and Printing Sections was terminated w. e. f. 11-10-88. The contention of the Employer is that, out of 33 workmen 7 workmen have already resigned prior to the declaration of closure w. e. f. 11-10-88 and that the termination of the service of the remaining 26 workmen was as a result of closure. The Employer has produced 7 resignation letters submitted by 7 workers namely S/Shri Ravindra Shirodkar, Navnath Devidas, Anant Priolkar, Shambu Shirodkar, Prakash Borkar, Gurudas J. Joshi and B. C. Pal. The employer has also produced the letters of acceptance of the resignation of the said 7 workmen issued to them by the employer. The employer also produced receipts issued by the said workers acknowledging the receipt of the amount due to them. The said resignation letters along with acceptance letters are produced at Exb. 30 and the receipts are produced at Exb. 31. Section 2 (oo) of the I. D. Act, 1947 defines retrenchment as under:

"Retrenchment means the termination by the employer of the service of the workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include (a) Voluntary retirement of the workman or (b) ....."

Adv. Shri Talaulikar for the employer submitted that since 7 workmen out of 33 workmen had resigned and their resignations were accepted by the employer prior to the closure the termination of the services of the said 7 workmen, would not come within the purview of, "Retrenchment". In this respect, he relied on the decision of the Supreme Court reported in AIR 1990 S. C. at page 1880. In the said decision, the Supreme Court has held that when one employee voluntarily tenders his resignation, it is an act by which he voluntarily gives up his job. Such a situation would be covered by the expression, "Voluntary Retirement", within the meaning of Sec. 2 (oo), of the I. D. Act. Therefore, applying the principles laid down by the Supreme Court in the above case, the case of the 7 workers who had resigned and whose resignation was accepted by the employer prior to the closure would not come within the purview of the definition of retrenchment. The other submission that has been made by Adv. Talaulikar for the employer is that termination of the service of the workmen on account of closure does not fall within the term, 'Retrenchment' as defined in the Sec. 2 (oo) of the I. D. Act and therefore, the termination of the service of the remaining 26 workmen would not amount to retrenchment. On this aspect, he relied upon the decision of the Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in AIR 1980 S. C. at page 1219. In the said decision the Supreme Court while analysing sections 25 (oo), Sec. 25-F, Sec. 25-FF and Sec. 25-FFF of the Industrial Disputes Act has held that the words "For any reason whatsoever," appearing in Section 2 (oo), of the I. D. Act covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act such as 25-FF and Sec. 25-FFF. It is an admitted fact that 26 workmen whose services have been terminated as a result of closure were in continuous service for more than one year. Section 25-FFF provides for termination of service in respect of a workman who is in continuous service for not less than one year. Therefore, the termination of their service is provided for by Section 25-FFF of the I. D. Act. Even otherwise, the case of the said 26 workmen falls within the purview of Sec. 25-FFF. This being the position the submission of Adv. Talaulikar for the employer that termination of the service of 26 workmen as a result of closure does not amount to retrenchment within the meaning of the term under the Industrial Disputes Act is not correct. It was so prior to the introduction of Sec. 25-FFF by Ordinance of 1957. After the introduction of the said Section any workman, discharged on closure of an undertaking is considered to have been retrenched as defined in Sec. 2 (oo) of I. D. Act. However, as laid down by the Supreme Court in the said case of Santosh Gupta (Supra), the termination of the service of a workman as a consequence of closure is to be treated as retrenchment for the purpose of notice, compensation etc. I, therefore, hold that the action of the management in terminating the services of 26 workmen amounts to retrenchment within the meaning of the term of the I. D. Act. However, it is treated as retrenchment for the purpose of notice and payment of compensation as per Sec. 25-F of the I. D. Act. Giving of notice and payment of compensation as provided in Sec. 25-F of the I. D. Act is not a condition precedent in case of closure, as otherwise it is in the case of

retrenchment as held by the Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. reported in AIR 1979 S. C. at page 170. In the circumstances, I answer the issue accordingly.

7. Issue No. 3: As per the notice dated 10-10-88, the Employer decided to close down the composing and printing sections w. e. f. 11-10-88. The said notice has been produced at Exb. 29. The reasons to close down the said sections as given in the said notice are that the hand composing method had become outdated, uneconomical and unsuitable process; the cylinder printing machine had also become outdated and unoperational and since the financial condition of the employer was not good enough, the employer had no option but to get the daily 'Rashtramat' printed from an outside agency. It is the case of the employer that it could not purchase new machinery of its own due to financial constraint. To substantiate this, the employer through its witness Shri Madkaikar has produced balance sheets for the year 1984-88 at Exb. 38. The said balance sheets are certified by the Chartered Accountants Bene and Naik. The balance sheets clearly shows that the financial position of the employer was weak when the closure was effected on 11-10-88. In the cross examination of this witness, the balance sheets Exb. 33, produced by him, have not been challenged. There is an admission on the part of the Union that the management of the other newspapers like Navhind Times, Nav Prabha and Gomantak had also effected the change from hand composing and process of printing to new machinery. However, this new machinery was purchased by the management of the said dailies and the Printing work was continued on the new machinery. However, this is not the case with the employer, Nav Gomantak Prakashan. On account of financial difficulties, it stopped completely the composing and printing sections as it could not afford to purchase new machinery. To compete with the other dailies and to continue with the publication of its daily, the employer had no other alternative, but to change the work to new process of printing and on account of financial difficulties, it has no alternative but to get the printing done with Xavier Printing Press. The Union has admitted by way of oral evidence as well as documentary evidence that the employer closed its Composing and Printing sections w. e. f. 11-10-88. The Union has alleged that the action of the Employer in terminating the services of 33 workmen was mala fide, illegal and unjustified and that their service was terminated because they were the Union Executive Committee members. In this aspect, Adv. Talaulikar for the employer submitted that the allegation of mala fides and victimisation is to be specifically pleaded giving the particulars of mala fides and victimisation which according to him has not been done by the Union. He relied upon the decision of the Supreme Court in the case of Orissa Cement Ltd., v/s Workmen reported in 1960 (1) L. L. J. Page 91 and in the case of Bharat Iron workers v/s Bhangubhai reported in AIR 1976 S. C. at page 99. It is true that it is a settled law that when mala fides and victimisation are pleaded by one party, the particulars of the same are required to be given and this is what is laid down in the above decision. This is because the party against whom mala fides and victimisation are pleaded should be in a position to meet out the case of the party who pleads mala fides and victimisation as it is considered to be a serious charge. The High Court of Bombay, Panaji Bench (Goa) in Writ Petition No. 11/1985 in the case of R. R. Nagvenkar, v/s M/s. Zuari Agro Chemicals Ltd., while relying on various decisions of the Supreme Court has also held that victimisation is a serious charge and therefore it has to be properly and adequately pleaded giving all the particulars upon which the charge is based to enable the employer to fully meet such charge. Secondly, mala fides and victimisation is to be proved by leading evidence. In this case, neither the particulars as required under the law are given nor any evidence has been led by the Union in this respect. On the contrary there is evidence on record to show that whatever demand was made by the Union to give raise in the wages and to provide facilities, there was settlement between the Union and the Employer and the Employer made payment and provided facilities as per the settlement. Though the Union contended that subsequent to the closure which came into effect or force from 11-10-88 the employer employed 7 or 8 workmen, there is no evidence to this effect except for the bare allegation from the Union. The Supreme Court in the case of M/s Indian Hume Pipe Co. Ltd., v/s Their workmen reported in AIR 1968 S. C. at page 1002 has held that once the Tribunal finds that the employer has closed his factory as a matter of fact, it is not concerned to go into the question as to the motive which guided him to close this factory. In another case of M/s Tata Nagar Boundary Company Ltd., v/s Their Workmen reported in AIR 1970 S. C. at page 1960, the Supreme Court held that closure has to be

genuine and bonafide in the sense that it should be a closure in fact and not a mere pretence of a closure. It has been further held in the said case that motive of closure is immaterial and what is to be seen is whether the closure is an effective one. Applying the above law laid down by the Supreme Court, it is immaterial to consider whether the financial condition of the employer was infact bad enough to close down its Composing and Printing Sections, though I must say that the employer has sufficiently proved by documentary evidence that its financial position was weak. I have already said earlier that since hand composing and process or printing used by it had become outdated and it is admitted by the Union that the other dailies like Navhind Times, Nav Prabha and Gomantak had resorted to printing by using new machinery, the employer also decided to close down its hand composing and printing sections and got the same done through outside agency namely Xavier Printing Press. The employer has also proved by evidence that Xavier Printing Press has nothing to do with Nav Gomantak Prakashan and that it is an independent agency. Shri Kolambkar, the witness of the Union in his examination in chief itself has accepted the fact that there is closure, and from his evidence it is clear that the dispute between the Union and the Employer was mainly regarding the question of quantum of compensation to be paid to the workmen. The Union was demanding for more compensation than the one offered by the employer. I have already stated earlier that there is no evidence to prove that the employer employed 7 or 8 workers subsequent to the closure. All these facts go to prove that the closure declared by the employer is genuine, bonafide and it has come into effect and force as a matter of fact. Also, while deciding the issue No. 1, I have already held that the closure has come into force from 11-10-88. It has also come on record through Shri Kolambkar, the witness of the Union that on closure, the management, that is the employer offered and paid the statutory compensation to all the workmen. Considering all these facts, I have no hesitation in holding that the action of the management of Nav Gomantak Prakashan in terminating the services of the 26 workmen is legal and justified which is a consequence of a closure of the Composing and Printing Sections of the employer. Hence, I answer this issue accordingly.

8. Issue No. 4: The employer's contention is that out of 33 workmen, 7 workmen had already resigned from service prior to the closure. In this respect the employer has produced resignation letters of the said 7 workmen and the receipts issued by them in acknowledgement of the receipts of their dues at Exb. 30 (colly). The 7 workmen who resigned on 10-10-1988 are Ravindra Shirodkar, Navnath Devidas, Anant Priolkar, Shambu Shirodkar, Prakash Borkar, Gurudas Joshi and B. C. Pai. Therefore at the time when the closure was declared, the remaining 26 workers were affected. It is the contention of the employer that after the closure was effected on 11-10-88 compensation as provided under section 25-F of the I. D. Act was paid to the said 26 workmen and besides that they were also paid all other legal dues. The employer has produced statement at Exb. 31 showing compensation paid to the 26 workmen and the statement at Exb. 32 showing bonus paid to the said 26 workmen. The payment of the compensation and all other legal dues has also been admitted by the Union through its witness Shri Kolambkar. The Union has contended that the management of the other dailies paid more compensation to their workmen than what was offered and paid by the employer to its workmen. To substantiate this the Union produced two memos of settlement one in respect of the daily Gomantak Exb. 19 (W) and the other in respect of the daily Navhind Times at Exb. 20 (W). However the case of the said two dailies cannot be equated with the case of Nav Gomantak Prakashan. From the said two settlements it can be seen that there was no closure declared by the management of the said two dailies. The management of the said two dailies had purchased new machinery for printing and therefore some workmen were found to be surplus,

and hence they were retrenched. Even then, once the closure is declared and it came into force, which closure was genuine and real, the workmen are entitled to retrenchment compensation only as laid down by the Supreme Court in the case of workmen of Indian Leaf Tobacco Development Co. Ltd. reported in AIR 1970 S. C. at page 860. It therefore follows that since the Union has admitted the payment of the compensation as provided under the law, the Union is not entitled to any more compensation. In the statement of claim, the Union has claimed reinstatement with full back wages and continuity in service. I have already held that the closure declared by the employer is genuine and real, and that there is closure infact. This being the case, the relief of reinstatement with full back wages cannot be granted to the Union. The Supreme Court in the case of workmen of Indian Leaf Tobacco Development Co. Ltd. (Supra) has held that when the closure is genuine and real, the workmen who have been retrenched due to such closure are entitled to retrenchment compensation only and cannot claim any reemployment or reinstatement. This being the position, I hold that the workmen are not entitled to any relief.

Considering all the aspects of the case, I hold that the action of the management of M/s Nav Gomantak Prakashan, Borda, Margao, Goa, in terminating the service of 33 workmen mentioned in the reference with effect from 11-10-1988 is legal and justified. Hence, I pass the following order.

#### ORDER

It is hereby held that the action of the management of M/s Nav Gomantak Prakashan, Borda, Margao, Goa, in terminating the service of the 33 workmen mentioned in the reference is legal and justified. The said 33 workmen are not entitled to any relief.

No order as to costs. The Government be informed.

Sd/-

(Ajit Jairam Agni)  
Presiding Officer  
Industrial Tribunal

#### Law (Establishment) Department

Notification by the High Court of Judicature,  
Appellate Side, Bombay

No. A. 1202/G/95

The Honourable the Acting Chief Justice and Judges are pleased to grant Shri V. P. Shetye, District and Sessions Judge, Panaji, Earned Leave for 13 days from 22-5-1995 to 3-6-1995 with permission to prefix 21 May, 1995 and suffix 4 June, 1995 both being Sundays and also permission to leave the Headquarters.

On return from leave Shri Shetye will be reposted as District and Sessions Judge, Panaji.

Shri N. A. Britto, Additional District and Assistant Sessions Judge, Panaji is kept incharge of the post of District and Sessions Judge, Panaji in addition to his own duties during the leave period of Shri V. P. Shetye from 22-5-1995 to 3-6-1995.

High Court, Appellate Side,  
Bombay, 6th April, 1995.

G. D. Parekh  
Addl. Registrar (Adm.)